IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4527 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

ASHOKKUMAR G DESAI

Versus

AHMEDABAD ADVANCE MILLS

Appearance:

MR S MEHTA for Petitioners

MR VIMAL PATEL for Respondent No. 1

None present for Respondent No. 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 15/08/97

C.A.V. JUDGEMENT

1. The petitioner No.2 has expired during the pendency of this Special Civil Application and on application filed by his heir and legal representatives they have been brought on record. However, for the sake of brevity and convenience as well as to avoid any confusion in the judgment their reference is made as petitioners.

2. The petitioners were workmen working in the respondent No.1-mill. Their services were terminated and they raised an industrial dispute through a union and the Government has made a reference to the Labour Court. Under the impugned award of the Labour Court, Navsari in reference No.LCN-632/83 decided on 3rd January, 1985, the reference has been dismissed. Hence, this Sp. C.A..

3. The learned counsel for the petitioners contended that as it was a case of simpliciter termination, before terminating their services the respondent No.1 should have complied with the provisions of sec.25-F of the Industrial Disputes Act, 1947, and as such, the termination is bad-in-law. It has next been contended that even if it is taken to be a case of termination of services of the petitioners by way of misconduct then the penalty is highly disproportionate and harsh.

4. On the other hand, the counsel for the respondent No.1 contended that it is a case where the petitioners were chargesheeted for grave and serious misconduct and a full-fledged domestic inquiry has been held in the matter. However, the respondent No.1 has not relied upon that inquiry and their services were brought to an end by way of simpliciter termination, but on reference now as the matter was of termination of service, which is preceded by domestic inquiry, the Labour Court has proceeded as if it is a case of termination by way of penalty and how it has also been taken by the petitioners before the Labour Court. In view of this fact, the counsel for the respondent No.1 contended that it is not open to the petitioners to now raise this new point that it was a case of simpliciter termination, and as such, the compliance of provisions of sec.25-F of the I.D. Act, 1947 has to be made. Carrying this contention further, the counsel for the respondent No.1 submitted that this plea was also not raised by the petitioners before the Labour Court. The penalty of termination was not found to be disproportionate or excessive by the Labour Court and this Court sitting under Article 227 of the Constitution may not interfere in the order. The inquiry conducted against the petitioner was accepted to be fair and reasonable and that is the reason that the Labour Court has proceeded further from that stage to examine the matter of victimisation as well as to go on the question of quantum of punishment.

5. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

6. From Para No.6 of the impugned award, it is clear that the counsel for the petitioners admitted before the Labour Court that the departmental inquiry which is held against them was legal and justified. The award also spells out the same and there is also no dispute between the parties that the inquiry has been held against the petitioners for a misconduct. Though it was ultimately taken to be a case of simpliciter termination by the respondent No.1 but that order of termination precedes with full-fledged domestic inquiry. The parties have went on before the Labour Court with a clear understanding that it was a case of termination of service of the petitioners by way of penalty. That is the reason that the Labour Court has entered into the question of fairness of the inquiry. When the inquiry was accepted to be fair then there was no occasion for the Labour Court to give any opportunity to the respondent No.1 to establish the charges before it. So the petitioners have taken it to be a case of termination of their services by way of penalty and the Labour Court too has taken it to be a case of termination of their services by way of penalty. The respondent No.1 has also ultimately not disputed this position. So, the counsel for the respondent No.1 is correct to contend that this plea of simpliciter termination as well as the termination in violation of sec.25-F of the I.D. Act, 1947, is a new plea which is sought to be taken before this Court by the petitioners. This plea was also not taken by the petitioners before the Labour Court.

7. Now only remains the contention of the counsel for the petitioners of quantum of punishment. The learned counsel for the petitioners submitted that the Tribunal has acted arbitrarily in holding that the punishment given to the petitioner in the present case is not excessive or harsh. While considering the question of quantum of punishment in the matter, the Labour Court has not considered the past service record of the petitioners. I have gone through the award carefully and I do not find that it can be said to be a case where the finding of the Labour Court in perverse on the question of quantum of punishment. The Labour Court has taken into consideration the seriousness of misconduct committed by the petitioners as well as the position of there. It is a case where the contractor of the respondent No.1 was prevented by the petitioners to enter in the mill premises. When a lawful contractor of the respondent No.1 is prevented by the petitioners then certainly it is a very serious misconduct. The justification given for obstructing the entry of the contractor by the petitioners on the ground firstly that

he was doing homosexuality with the workers and secondly, that the petitioners were office bearers of the union.

8. Both the points have been considered by the Labour Court. So far as the first point is concerned, the Labour Court has given a finding that the allegation of homosexuality against the contractor, it is established that this is fabricated after the applicants were issued a chargesheet. It has further been stated by the Labour Court that no witnesses are examined amongst the employees who had fallen the victims of the said act of the contractor. Another fact has been noticed by the Labour Court that it is a cognisible offence and the complaint could have been lodged before the police, but no such complaint is lodged. On these grounds, the petitioners were not justified to obstruct the entry of the contractor from going to his place of work. One Shri Banaji has intervened in the matter and he tried to convince the petitioners that they should not obstruct the entry of contractor from going to his place of work, but the petitioners have threatened that person. In view of this fact, the petitioners were not justified to pray for indulgence in the matter of penalty given to them on this ground and no exception to the finding of the Labour Court can be taken.

9. The second ground which has been given is correctly not accepted by the Labour Court. Merely because the petitioners are the office bearers of the union they cannot be given any licence and they cannot have any licence to obstruct the entry of the contractor of the respondent to his place of work. On the contrary, being the office bearers of the union, the petitioners should have been presented themselves to be more disciplined. It seems to be a case where the petitioners have misused their position as office bearers. The finding of Labour Court that the penalty of dismissal from services imposed upon the petitioners is to be maintained does not suffer from any illegality or infirmity which calls for interference.

10. Now much emphasis has been placed by the counsel for the petitioners on the ground that the past service record of the petitioners have not been considered before giving the penalty of termination. The past services of the petitioners are stated to be unblemished. Even if it is taken to be so, how far the petitioners are justified to contend that in view of this fact they should have been given the lesser punishment. So what the petitioners' counsel suggested appears to be that the petitioners should have been given a licence to repeat

such misconduct. The matter has to be considered with reference to the misconduct alleged and found proved and other attending circumstances in the matter. What punishment should be given to a delinquent employee on proved misconduct is exclusively in the domain of the employer. Imposition of the penalty is the right of the disciplinary authority consistent with the magnitude and misconduct imputed and the evidence in support thereof. This Court sitting under Articles 226 or 227 of the Constitution has very limited power of judicial review in such matters. Reference in this respect may have to the two decisions of the Hon'ble Supreme Court in the case of State Bank of India vs. Samarendra Kishore Endow reported in JT 1994 (1) SC 217 and in the case of B.C. Chaturvedi vs. Union of India reported in JT 1995 (8) SC 65. I do not find that the punishment given to the petitioners is shocking to the judicial conscience of this Court.

11. In the result, this Special Civil Application fails and the same is dismissed. Rule discharged.

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